Paul D. Sarkozi
Alan Tenenbaum
TANNENBAUM HELPERN
SYRACUSE & HIRSCHTRITT LLP
900 Third Avenue
New York, New York 10022
(212) 508-6700
Attorneys for Plaintiffs NIKE, Inc.
and NIKE USA, Inc.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NIKE, INC. and NIKE USA, INC.,

Plaintiffs,

-against-

REEBOK INTERNATIONAL LTD.,

Defendant.

Civil Docket No.

DECLARATION OF RANDALL TODD BURDETTE

- I, Randall Todd Burdette, declare as follows:
- 1. My title at NIKE is Director of Licensed Sports. I have worked in this position at NIKE since on or about May 16, 2011. My responsibilities include determining the strategic direction for the licensed sports organization and managing the total profitability of the company. My duties also include overseeing the licensed sports sales functions and operations to insure successful meeting of sales goals, and to ensure execution of successful marketing strategies, advertising, promotions, and public relation programs. In my role I interact directly with key personnel with the NFL. Unless otherwise indicated, I have personal knowledge of the matters discussed below.
- 2. Plaintiffs Nike, Inc. and Nike USA, Inc.(referred to collectively as "NIKE") are corporations organized under the laws of the State of Oregon and their principal place of business is at One Bowerman Drive, Beaverton, Oregon.
- 3. The NIKE brand is known throughout the world. NIKE designs, markets and distributes shoes, clothing and other products in interstate and foreign commerce, including all states in the United States.
- 4. NIKE and Reebok are competitors (Reebok is a subsidiary of NIKE's global competitor, adidas AG). Each offer for sale a variety of athletic footwear, apparel and other products, including football-related licensed apparel products.
- 5. Last week, Reebok introduced new products bearing professional football player Tim Tebow's name and presumed New York Jets football number on New York Jets branded sporting apparel. To my knowledge, Reebok has been distributing and selling such products in interstate commerce since around March 21, 2012. NIKE has an endorsement agreement with

Mr. Tebow under which it is authorized and licensed to use Tim Tebow's name on apparel products of the type being sold by Reebok.

- 6. On March 21, 2012, the Denver Broncos announced that they had agreed to trade Mr. Tebow to the New York Jets. The New York area is the largest professional sports and media market in the United States, and market for NFL football currently the most popular sport in the United States as measured by, among other things, national television rankings.
- 7. Mr. Tebow's high-profile trade to the New York Jets generated an immediate and intense consumer demand for Tim Tebow-identified New York Jets-branded apparel. The public demand for such Tebow-Jets products comes at a time when NFL-related commercial activities are normally at a seasonal low point with the completion of the 2011 NFL season over a month past, and the 2012 NFL regular season around five months away. Reebok has seized on this unique and short-lived consumer opportunity by soliciting sales of, and selling, Tim Tebow-identified New York Jets-related apparel. An example of a Tim Tebow-identified New York Jets-branded product that has been newly introduced and is currently being offered for sale, and has been sold by Reebok since March 21, 2012, is set out below.

Reebok Milliam Tim Tebow Green New York Jets Name & Number T-Shirt



See Fans Edge website http://www.fansedge.com/Tim-Tebow-Grey-New-York-Jets-Name-Number-T-Shirt--780719583 PD.html See also Modell's Sporting Goods website

http://www.modells.com/product/tim_tebow_green_new_york_jets_name_number_t-shirt-22-50113.do?sortby=nameAscend&from=Search (describing this Reebok shirt as "official licensed.") Copies of these web pages are attached to this Declaration as Exhibit 1.

The Trade Created a Unique Short Lived Demand for Tebow-Identified New York Jets Apparel

- 8. Sales of Tebow's No. 15 Broncos jersey have consistently been among the most popular NFL jerseys. This past NFL season, Mr. Tebow's Broncos jersey was the second highest selling NFL jersey, topped only by sales of the jersey for Green Bay Packers' Aaron Rodgers (Super Bowl XLV MVP in 2010, FedEx Air NFL Player of the Year 2010) (see http://www.cnbc.com/id/44789354/The 10 Best Selling NFL Jerseys 2011).
- 9. Mr. Tebow's trade to the New York Jets, coupled with the combination of the franchise's location within the NFL's largest market and the nation's media center, has created an enormous demand for Tim Tebow identified Jets apparel. *See*

4 – DECLARATION OF RANDALL TODD BURDETTE

http://www.todaysthv.com/video/1526660617001/1/New-Tim-Tebow-Jets-jerseys-go-on-sale;
http://www.ny1.com/content/top_stories/158099/fans-scoop-up-jets-merchandise-with-tebow-s-name

- 10. NIKE sales personnel report that shortly after the Tebow trade was announced on March 21, 2012, Reebok notified retailers that it was offering and prepared to deliver Tebowidentified Reebok New York Jets apparel and was accepting orders.
- 11. NIKE's efforts to obtain orders from retailers for Tebow-identified New York Jets apparel products have been rebuffed because retailers have pending orders with Reebok for Tebow identified New York Jets jerseys and T-shirts.

The Licensing Rights Associated With the Manufacture and Sale of NFL Apparel Identified by a Specific Player's Name and Number

- 12. A legitimately licensed NFL product with a player's name and number on it requires two distinct grants of rights: the right to use the trademarks of the NFL and/or its member clubs (logos, team name, uniform designs) (collectively, "NFL Marks"), and the right to use players' names and playing numbers on the NFL branded apparel. The right to license the use of NFL Marks, for product licensing purposes, is exclusively controlled by the NFL's licensing entity, NFL Properties LLC ("NFL Properties"). NFL Properties has no authority to grant rights to use players' names or numbers and, in its licenses, disclaims any such rights.
- 13. There are only two ways in which a product manufacturer can acquire the right to use an NFL player's name and number on merchandise: (1) obtain that right directly from the individual player, or (2) enter into a so-called "group license" with NFL Players Incorporated, the licensing arm of the National Football League Players Association, which is the players' union ("NFL Players"). NIKE currently enjoys a license from both Tebow and NFL Players.

- 14. Under a March 24, 2010 Letter Agreement with Tim Tebow (the "NIKE Tebow Agreement"), Tim Tebow granted NIKE the exclusive right to use Tim Tebow's name individually in connection with, among other products, athletic and casual apparel ("Covered Products") That agreement remains in effect.
- NFL Players License"). The NIKE NFL Players License grants NIKE the right to use an aggregate of the identities of six or more NFL players (hence, a so-called "group license") in connection with the manufacture and sale of certain lines of products, namely jerseys, T-shirts and fleece apparel. NFL Players obtains these group license rights through an assignment made by each player in the NFL. Practically, this group licensing affords marketers and licensed product manufacturers the convenience of "one-stop shopping" by providing them with the ability to secure the publicity rights of multiple NFL players at once from a single source, rather than having to seek a license from each NFL player individually, which could be unduly burdensome with nearly 1,700 active NFL roster players. However, the individual players are still free to enter into individual endorsement and licensing arrangements with third parties for singular uses of the athlete's identity on athletic apparel and other products, as Tebow did with NIKE.
- 16. To my knowledge, Reebok is not authorized to use Tim Tebow's name and number for Jets branded apparel products, either by Tim Tebow individually or by the NFL Players pursuant to a group licensing arrangement.
- 17. Tebow was not a member of the New York Jets football team until at least March 21, 2012, long after March 1, 2012, when Reebok's NFL Players group license rights expired. Whatever rights Reebok may have had expired, and ours began, on March 1, 2012.

- 18. Reebok's license to use the NFL Marks on apparel expires March 31, 2012. Commencing April 1, 2012, NIKE's license to use the NFL Marks on apparel begins, and NIKE will succeed Reebok as the supplier of NFL team uniforms and as a licensee to manufacture and sell certain NFL-authorized apparel, such as jerseys and T-shirts featuring NFL Marks.
- 19. Therefore, until March 31, 2012, Reebok may create new products featuring NFL Marks, but it cannot put player identities (names and numbers) on those products because its NFL Players' license expired on March 1, 2012. So Reebok can sell a New York Jets T-shirt until March 31, 2012, but not one featuring Tim Tebow and his number 15.

Reebok's Sale of Tim Tebow Identified Jets Apparel is Preventing NIKE from Taking Advantage of a Unique Marketing Opportunity Arising from the Tebow Trade and the Upcoming Announcement of NIKE's New NFL Uniform and Apparel Program

- 20. The new NIKE-supplied NFL uniforms for all 32 NFL teams are scheduled to be unveiled on April 3, 2012 in a major media event to be held in New York City. The much anticipated event will mark the start of NIKE's five-year deal to be the league's provider of onfield apparel, which includes game uniforms and sideline apparel. NIKE is also licensed to manufacture and sell NFL authorized jerseys and other apparel to consumers.
- As noted above, the demand for Tebow-identified New York Jets apparel arising from last week's trade is intense. Based on the upcoming April 3rd disclosure of the NIKE-supplied official New York Jets uniforms and apparel for use in the 2012 season, I would anticipate that demand for Tebow identified Jets apparel would only increase. However, Reebok's distribution of unauthorized Tebow-identified New York Jets related apparel will substantially limit the opportunity of NIKE to fully realize on the unique opportunity presented by the Tebow trade to the Jets and the announcement of the new NIKE NFL uniforms. Reports in the press and from our sales representatives indicate that Reebok is in the process of shipping

large volumes of Tebow-identified apparel products to retailers for distribution. These shipments are expected to reach retailers in New York this week.

- 22. The opportunity to sell the first Tebow-identified New York Jets-related apparel is a unique and short-lived opportunity. It is unlikely that consumers who purchase an unauthorized Tebow-identified NFL jersey from Reebok this week will purchase an authorized Tebow jersey from NIKE the following week. If Reebok continues to supply unauthorized Tebow-identified New York Jets-related apparel to the market, the current unique consumer demand for these products will be satisfied or substantially reduced, and the opportunity for NIKE to fully realize the benefits of this unique period of demand will be lost forever.
- 23. Within a week or two, NIKE will be in a position to deliver Tim Tebow-identified New York Jets apparel consistent with the designs that will be used by the Jets in the upcoming 2012 season.

I declare under penalty of perjury under the laws of the State of ______ and the laws of the United States of America that the foregoing is true and correct.

DATED this 27 day of March, 2012.

RANDALL TODD BURDETTE